

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BARRY A. CHESTER,)	
)	
Appellant,)	
)	
V.)	C.A. No. N10A-05-009 JRS
)	
ADECCO USA and the)	
UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
)	
Appellees.)	

Date Submitted: January 26, 2011
Date Decided: April 6, 2011

*Upon Consideration of
Appeal From the Unemployment Insurance Appeal Board.*
AFFIRMED.

ORDER

This 6th day of April, 2011, upon consideration of the *pro se* appeal of Barry Chester from the decision of the Unemployment Insurance Appeal Board (the “Board”) denying his claim for unemployment benefits against his former employer, Adecco USA (“Adecco”) (a temporary hiring agency), it appears to the Court that:

1. Mr. Chester was employed as a full-time factory worker by Rexam through

Adecco from February 10, 2009 through November 16, 2009.¹ He would work day shifts on some days from 6:00AM to 6:00PM and on other days he would night shifts from 6:00PM to 6:00AM.²

2. At some point during his employment, Mr. Chester began taking classes from 8:30AM to 2:30PM, conflicting with his work schedule.³ As a result, he missed several days from work and was eventually told that his assignment with Rexam was ending because of his absences.⁴

3. Adecco's policy, which Mr. Chester received and signed, requires employees to call the agency for reassignment within two days of the end of an assignment.⁵ The policy further states that failure to make contact within the requisite period could affect the receipt of unemployment insurance benefits.⁶ It is not disputed that Mr. Chester failed to call within the time required.⁷

¹Record ("R." at __) at 9.

²*Id.*

³*Id.*

⁴*Id.* The Court notes that Mr. Chester claims that he missed work not only because of classes, but also because he suffers from insomnia and schizophrenia. R. at 11.

⁵R. at 9.

⁶*Id.*

⁷Adecco claims that Mr. Chester did not call the agency until November 25, 2009. R. at 9. Mr. Chester claims that he contacted the agency on October 25, 2009. Appellant's Opening Br. pg. 1. Either way, Mr. Chester did not call within two days as required by the Adecco policy.

4. On October 25, 2009, Mr. Chester filed for unemployment benefits, reporting that he was discharged for excessive absenteeism.⁸ On November 16, 2009, the claims deputy denied Mr. Chester's claim for benefits finding that he voluntarily quit without good cause pursuant to 19 *Del. C.* §3327 by failing to call Adecco for reassignment within the time period required.⁹

5. Mr. Chester subsequently filed an appeal of the claims deputy's decision on November 23, 2009.¹⁰ A hearing was conducted before the appeals referee on December 21, 2009. The referee affirmed the claims deputy's decision on the basis of 19 *Del. C.* §3327.¹¹ Mr. Chester filed an appeal of that decision with the Board on January 12, 2010.¹²

6. On March 9, 2010, the Board held a hearing on the appeal of the referee's decision.¹³ Mr. Chester testified that he was terminated for failing to attend

⁸R. at 5.

⁹19 *Del. C.* §3327(b) states that: "A temporary employee of a temporary help firm will be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment upon completion of an assignment. Failure to contact the temporary help firm will not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact the firm upon completion of assignments and that unemployment benefits may be denied for failure to do so."

¹⁰R. at 6.

¹¹R. at 9.

¹²R. at 11.

¹³R. at 12.

work.¹⁴ He further testified that his absences from work were due to his school schedule and his insomnia.¹⁵ Amy Beachell, the employer's representative, testified that Mr. Chester's last day of employment was October 15, 2009, and the he did not call the agency for reassignment until November 25, 2009.¹⁶ Ms. Beachell further testified that Adecco's policy (which was submitted into evidence) requires that employees advise Adecco of their availability for reassignment within 48 hours of ending an assignment.¹⁷ Mr. Chester admits that he signed the policy.¹⁸ The Board affirmed the decision of the referee, although on different grounds, finding that Mr. Chester failed to contact his employer as required by a known and reasonable policy and, as such, was discharged for just cause.¹⁹

7. On appeal to this Court, Mr. Chester claims that Adecco should have terminated him for failing to call the agency within the requisite period in violation of Adecco's rules (which it did not do), as opposed to finding that he voluntarily

¹⁴R. at 13.

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

¹⁹R. at 14.

quit.²⁰ According to Mr. Chester, this distinction affects his right to claim for unemployment benefits.

8. The Court's review is limited to determining whether the Board's decision was supported by substantial evidence and free from legal error.²¹ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."²² The record must be reviewed in the light most favorable to the prevailing party.²³ Alleged errors of law are reviewed *de novo*, but in the absence of legal error, the Board's decisions are reviewed for an abuse of discretion.²⁴ This Court will find an abuse of discretion only when an administrative board's decision "exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice."²⁵

²⁰Appellant's Opening Br. pg. 1.

²¹See, e.g., *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, *3 (Del. Super. 2003).

²²*James Julian, Inc. of Del. v. Testerman*, 740 A.2d 514, 519 (Del. Super. Ct. 1999) (citations omitted)

²³See, e.g., *Id.*; *E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. Ct. 2004).

²⁴See *Merritt v. United Parcel Svc.*, 956 A.2d 1196, 1200 (Del. 2008) (citations omitted).

²⁵*Bolden v. Kraft Foods*, 2005 WL 3526324, *3 (Del. Super. Ct. 2005).

9. As stated, pursuant to 19 *Del. C.* §3327(b), “[a] temporary employee of a temporary help firm will be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment upon completion of an assignment.” The statute further requires that the employee be given notice that the failure to call the agency may affect the employee’s eligibility for unemployment benefits.²⁶ 19 *Del. C.* §3314(1) mandates that a claimant be disqualified for benefits where the claimant leaves work voluntarily and without good cause.

10. The undisputed record before the Court reveals that Mr. Chester failed to contact Adecco within the two days required by the agency’s policy. Moreover, it is clear from the evidence that Mr. Chester received and signed the policy, labeled “mandatory contact notice.”²⁷ Pursuant to 19 *Del. C.* §§ 3327(b) and 3314(1), the undisputed record mandates that Mr. Chester be disqualified from receiving unemployment benefits. While the Court reaches its decision on a different basis than the Board, the outcome is nonetheless the same.²⁸

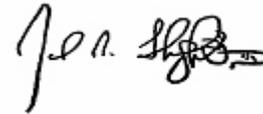
²⁶19 *Del. C.* §3327(b).

²⁷R. at 17. The policy conspicuously states, at the top of the page and in bold lettering, that “[f]ailure to adhere to these terms may lead to the denial and/or interruption of unemployment benefits.” *Id.*

²⁸The Board affirmed the appeals referee on the basis that Mr. Chester was terminated for just cause, which would also preclude Mr. Chester’s receipt of unemployment benefits. The more appropriate reasoning, however, rests upon the standard set forth in 19 *Del. C.* §3327(b), which the appeal referee applied to her determination.

11. Based on the foregoing, the Court is satisfied that the Board 's decision to uphold the denial of unemployment benefits is supported by the law and substantial evidence. Accordingly, the decision of the Board denying Mr. Chester's application for unemployment compensation must be **AFFIRMED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J. R. Slights, III". The signature is written in a cursive style with a horizontal line at the end.

Joseph R. Slights, III, Judge

Original to Prothonotary